
Beware Poorly Developed Renewable Energy Projects

In this article we explain some of the key aspects to check as potential purchasers of renewable energy projects – particularly solar farms – are lured with “ready to build” developments.

Numerous small (and often reasonably recently formed) entities are touting for sale interests in renewable energy farms in New Zealand, particularly solar farms, some with battery storage. Their targets are mainly overseas developers with deep pockets and little familiarity with New Zealand laws or energy markets.

Our experience in acting for purchasers on several of these reveals differing levels of readiness in projects described as secured, consented and otherwise ready to build.

Aspects to check in particular are:

- Did the seller itself obtain all necessary consents to hold, or have an option, over the interest in the relevant rural land? Did it obtain Overseas Investment Act consent from the Overseas Investment Office and has it complied with the conditions of that consent?
- What sort of interest in land has been secured? If only an easement or a licence, is it in fact really a lease for OIO purposes? Check what consents you require under the Overseas Investment Act to acquire your project interest, and how likely you are to meet the consent tests. How will you deal with the farmland advertising requirement?
- Does the project hold all required resource consents or fast-track approvals?
- Are the consents over the right piece of land, and are the conditions sufficiently wide to allow the relevant earthmoving, traffic, construction and operating activities?
- Is the project grid consented? There are differing levels of formality in national grid or distribution network consents, and a mere letter agreeing to undertake grid studies or provision of a template connection agreement does not mean the project is grid consented. There is a very long queue of renewable energy projects awaiting grid connection from Transpower or network connection from the local lines company. The process is detailed, expensive and takes time.
- At what stage are any PPA (power purchase agreement or offtake agreement) negotiations? Does the PPA have a completion deadline or sunset date? Are its conditions precedent acceptable and bankable? How secure is its fixed pricing against spot price volatility and what floors or “outs” apply?
- Generators will need to comply with the Electricity Industry Participation Code 2010. Have you factored the compliance costs into the project (particularly settlement prudential requirements)?
- If the seller is retaining an interest in the project, do you need some security over that

interest? Can the seller grant it without consent from an existing security holder? Make sure your secured interest is registered on the PPSR (personal property securities register).

- What EPC contracting is in place, or planned? What O&M arrangements? What governance implications do these have for any shareholders' agreement or limited partnership agreement?

To talk about investing in a renewable energy project with experienced lawyers, please contact Brigid McArthur, Nick Dunn or Vimal Nair.
